

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

Pimmit Branch Falls Church, Virginia 22043

Docket No. A2011-90

INITIAL BRIEF OF PETITIONER ELAINE J. MITTLEMAN
(December 9, 2011)

Respectfully submitted,

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STATEMENT OF THE CASE

In Order No. 882 (September 29, 2011), the Postal Regulatory Commission (õCommissionö) instituted a proceeding under 39 U.S.C. § 404(d) and assigned Docket No. A2011-90 to consider the Petition for Review received from Elaine J. Mittleman. On October 12, 2011, the United States Postal Service filed the Administrative Record.

PERTINENT STATUTORY AUTHORITY

The applicable statute is 39 U.S.C. § 404(d). The Commission has explained that, under 39 U.S.C. § 404(d), the Postal Service must provide notice prior to making a determination to close any post office. Notice of its intent to close is required at least 60 days before the proposed closure date to ensure that patrons have an opportunity to present their views regarding the closing. If the Postal Service decides to close the post office, it must make its Final Determination available to the public for 30 days, allowing the patrons the opportunity to appeal the determination to the Commission. The Commission reviews the Postal Service's determination to close or consolidate a post office ñon the basis of the record before the Postal Service in the making of such determination, as required by 39 U.S.C. § 404(d)(5). *See* Docket No. A2011-16, Order No. 843, Order Affirming Determination

(Akron-East Station), September 8, 2011, at 8. The Postal Service shall take no action to close or consolidate a post office until 60 days after its written determination is made available to persons served by such office. *See* 39 U.S.C. § 404(d)(4).

In making a determination whether or not to close a post office, the Postal Service must consider the following factors, pursuant to § 404(d)(2)(A): the effect on the community; the effect on postal employees; whether a maximum degree of effective and regular postal service will be provided; and the economic savings to the Postal Service.

The Commission has repeatedly rejected the Postal Service's jurisdictional arguments based on the Postal Service's internal categorization of its retail facilities. *See* Docket No. A2010-3, Order No. 477, Order Dismissing Appeal (East Elko), June 22, 2010, at 5-6.

The provisions in § 404(b), now codified as § 404(d), were found to apply to closings and consolidations and not to the transfer of sorting activities. A major distinction was that postal customers would not be affected by the transfers. In light of the continuation of all postal services rendered to the public, the public would not know where the bulk mail sorting operations occurred. *Knapp v. United States Postal Service*, 449

F.Supp. 158, 162 (E.D.Mi. 1978). Thus, the important policy considerations of 39 U.S.C. § 404(d) are based on the effect of closings and consolidations on the postal customers.

The Commission shall set aside any determination, findings, or conclusions found to be (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (B) without observance of procedure required by law; or (C) unsupported by substantial evidence on the record. The Commission may affirm the determination of the Postal Service or order that the entire matter be returned for further consideration. *See* 39 U.S.C. § 404(d)(5).

ISSUES CONCERNING APPEALS OF CLOSINGS

Definition of post office

There is a long-standing dispute between the Postal Service and the Postal Regulatory Commission about the discontinuance procedures for stations and branches. The description of stations and branches is included in 39 CFR§ 241.2. The description states that “Stations are established within the corporate limits or boundary, and branches are established outside the corporate limits or boundary of the city, town, or village in which the main post office is located.”

This dispute about discontinue procedures is based on a difference of opinion about the definition of post office. The Postal Service supports its interpretation of 39 U.S.C. § 404(d) in large part based on its reading and analysis of legislative history. According to the Postal Service, “Congress knowingly used “Post Office” in its technical sense thereby excluding stations and branches from the scope of 39 U.S.C. § 404(d).” See Postal Service opposition to petitioner’s motion to reopen Pimmit Branch, filed on November 23, 2011, at p. 2, n. 8.

The Postal Service relies upon its own narration about what is the definition of a post office to then unilaterally exclude stations and branches from the statutory provisions of 39 U.S.C. § 404(d). The Postal Service also has not complied with many of the discontinuance procedures set out in 39 CFR§ 241.3. Thus, the detailed discontinuance process, which includes notice and a significant opportunity to comment, has not applied in a meaningful way to customers of stations and branches. This interpretation of the statute by the Postal Service, which has the effect of excluding many postal customers from the protections of 39 U.S.C. § 404(d), has caused significant hardships for customers of stations and branches.

The definition of post office is significant because the Postal Service’s

interpretation of that word is the underpinning for the Postal Service to provide fewer procedural protections to stations and branches. The interpretation of 39 U.S.C. § 404(d) should be evaluated pursuant to the *Chevron* test. See *United States Postal Service v. Postal Regulatory Commission*, 640 F.3d 1263, 1266 (D.C. Cir. 2011), citing *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-43 (1984). The fact that the Postal Service has been permitted to continue to provide fewer procedural protections to stations and branches raises significant due process issues.

Moreover, good policy and fairness should encourage the Postal Service to treat all discontinuances and postal customers the same. The Postal Service should have an interest in ensuring that proper notice and factual determinations are made in closing decisions for all retail facilities.

The witness for the Postal Service in the RAOI Initiative described some advantages of the revised discontinuance regulations as follows: “the revised regulations aim to standardize and otherwise improve the administration and management of the discontinuance process. í Finally, the new rule addresses some internal and public confusion concerning the postal retail facility discontinuance process by harmonizing time periods and

procedures for discontinuance of Postal Service-operated stations and branches with those for discontinuance of Post Offices.ö See Docket No. N2011-1, Retail Access Optimization Initiative, Direct Testimony of James J. Boldt on behalf of the United States Postal Service, USPS-T-1, July 27, 2011, at 18.

The Postal Service has not articulated a policy reason why stations and branches should receive limited procedural protections from closings and loss of adequate service. Particularly in light of the budgetary problems of the Postal Service, there should be first-rate analysis on the financial impacts of all closing decisions. If the Postal Service closes profitable retail facilities and drives away customers, then the closings will exacerbate the revenue losses and declining reliance by the public on the facilities run by the Postal Service.

The interpretation of legislative history for any statute is a complicated matter and has been addressed in numerous cases. However, there is the fundamental proposition that the statute means what it says. If the language in the statute is clear, then there may be no need to evaluate the statute in light of legislative history. Petitioner submits that there is a strong argument that the language of 39 U.S.C. § 404(d) is clear and no legislative

history is needed to interpret it.

Moreover, even if the legislative history of 39 U.S.C. § 404(d) is evaluated, petitioner asserts that 39 U.S.C. § 404(d) should apply to all post office retail facilities, which include stations and branches. The Postal Service capitalizes “Post Office” in its argument that “Congress knowingly used ‘Post Office’ in its technical sense.” However, post office is not capitalized in 39 U.S.C. § 404(d) and the term is not used in whatever “technical sense” the Postal Service is attempting to construct.

Petitioner submits that a better reading of the legislative history shows the concern of Senator Jennings Randolph that postal customers not lose their local service, which is an important part of the community. The significance of having local postal service applies equally to stations and branches as it would to a main Post Office, as defined by the Postal Service. Certainly, the Pimmit Branch is an important part of the Pimmit Hills community. Closing it has created a huge hole in the heart of Pimmit Hills.

Petitioner respectfully submits that it may be necessary for the long-standing dispute about 39 U.S.C. § 404(d) to be addressed on the merits. Moreover, it is possible that this dispute may need to be addressed in the United States Court of Appeals for the District of Columbia Circuit. In the

meantime, it is harmful to stations and branches and their customers to permit this dispute to continue unresolved.

The impact of the unresolved dispute is reflected in the opposition to petitioner's motion to reopen the Pimmit Branch, which was filed by the Postal Service on November 23, 2011. In its opposition at page 4, the Postal Service states that "the Postal Service satisfied the salient provisions of section 404(d)(5)(A) - (C)." However, the Postal Service fails to address the provisions of 39 U.S.C. § 404(d)(4). The Postal Service is apparently just ignoring that statutory provision.

Finally, the wholly unequal positions between persons who appeal closures of their local post office and the Postal Service with its staff of attorneys must be appreciated. A petitioner has scarce time, funds or understanding of postal law and procedure to wage a thorough appeal. It is likely that most petitioners are not attorneys or do not have the assistance of legal counsel, except perhaps for some pro bono counsel. Those petitioners have an overwhelming disadvantage while facing deadlines and the need to review a bulky administrative record. Many petitioners even have difficulty learning the procedures and carrying out efilings.

Thus, the many procedural and substantive issues raised in appeals of

closings have presumably not been addressed in a manner typical of much litigation, when the parties or their counsel are familiar with the facts and pertinent statutes. This complete imbalance of capabilities between the petitioners and the Postal Service, in conjunction with the use by the Postal Service of boilerplate pleadings and canned responses to comments, has enabled a process which seems to lack substantive findings based on the individualized record for each appeal. The discussions and conclusions in the final determinations often contain identical language. The overall impression is of a procedure that is more of a bureaucratic exercise than an actual decision-making process.

Decision to conduct discontinuance study

A significant milestone in the discontinuance process is the initial proposal to conduct a discontinuance study. In addressing the procedures used in the discontinuance study for the Pimmit Branch, the Postal Service has stated that “Chapter 7 of 2007 Handbook PO-101 does not include specific requirements concerning the documentation related to a request for discontinuance of a branch, but Section 721 of the 2007 Handbook PO-101 states that “Requests for discontinuance must be accompanied by enough information to document the request.” See Postal Service Response to

Order No. 1005, December 2, 2011, at 2 (footnotes omitted).

There is a substantial question as to what criteria the Postal Service has used to select stations and branches for discontinuance studies. There had only been 21 discontinuance proposals for stations and branches in the past five years, according to a statement by the Postal Service in a brief dated December 16, 2009.

In light of the limited procedures accorded to stations and branches, the decision to select a particular station or branch as one to be considered for discontinuance is very important. Once a station or branch has been selected for a discontinuance study, it seems that the actual discontinuance is almost a certainty. Thus, the process would be improved and achieve better results if there were specific requirements to begin a discontinuance study for stations and branches.

Postal Service Final Determinations

As noted by the Commission in numerous orders, the recent Postal Service final determinations have had serious failings. These include the lack of proper and adequate notice and opportunity to comment on closing decisions, incomplete consideration of the economic savings to the Postal Service and inadequate evaluation of alternative service available.

The appeals show that there has been a lack of proper notice. The Postal Service apparently has operated on the assumption that the notice and comment requirements are less rigorous when the closing pertains to a branch. The notice and comment requirements should be the same for all closing determinations. Moreover, the Postal Service has left the impression in several cases that it had already made a decision before it sought comments. The persons submitting comments felt that their thoughts were not properly considered and that the process was essentially a waste of their time.

If the Postal Service wants to garner the support of the public for the closing determinations, it must ensure that the process is open and that patrons feel they had a proper opportunity to comment and have their views considered. The closing determinations affect seniors, in particular, in a very personal manner. The post office should be a friendly, neighborhood place and its patrons have relied upon its convenience and accessibility. The sudden and thoughtless closing of these neighborhood institutions is a shock and should not be undertaken without the greatest care to meet the needs and concerns of the patrons.

In its new rules governing the closing of postal retail facilities, the

Postal Service indicated that it will implement a more robust measurement of financial impact. *See* 76 FR 41413, 41418 (July 14, 2011). A substantive and factually-accurate cost savings must be included in all determinations about closings. Even if the rules are considered to be prospective only, the statutory provision that requires consideration of the economic savings to the Postal Service must be followed. *See* 39 U.S.C. § 404(d)(2)(A). The failure to comply with these statutory requirements cannot be ignored or simply excused by the Commission's hope that the Postal Service will have a "more accurate measurement of actual cost savings." Order No. 865, p. 12, dated September 20, 2011, Docket No. A2011-18.

Determination of Economic Savings

The determination of economic savings is also fundamentally flawed because of the failure of the Postal Service to determine the effects on revenue from closing a facility. The Postal Service apparently simply assumes that the revenue will remain unchanged and that patrons will take the same amount of business to other facilities. This assumption cannot be supported. The use of facilities is greatly determined by convenience. If patrons are forced to spend a considerable amount of time to arrive at a facility, they will seek alternate methods of shipment, such as FedEx and

UPS, or simply withdraw from reliance upon the Postal Service.

In its new rules, the Postal Services stated that “situation-dependent and speculative factors like revenue leakage are difficult to quantify.” 76 FR 41418 (July 14, 2011). The Postal Service cannot perform a substantive determination of economic savings if it does not quantify the revenues of a post office and at least estimate the revenues lost from a closing.

The methodology used now by the Postal Service is meaningless. Based on its present method, closing any facility will produce some type of “cost savings,” simply because the facility is no longer in operation. In the absence of also quantifying revenues, these cost savings provide no guidance concerning which facilities should be closed. The larger and busier post offices would probably show the greatest “cost savings” if they were closed. Thus, the calculation of cost savings, without any reference to revenue or net profit, provides no substantive fiscal measure to make a determination about closing.

If the Postal Service continues to calculate “cost savings,” without regard to revenues or profits, it can actually further exacerbate its budgetary crisis. The closing of any post office could presumably be justified by looking only at savings from eliminating a lease payment or employees (who

may just be moved to other facilities). Thus, postal facilities which are profitable and in great demand could also be closed based on "cost savings." A proper profit-and-loss statement is needed to make any economic determination on closing stations.

Moreover, the Postal Service should consider the overall impact of closing many stations. If the number of stations closed is so large that service options are seriously affected, the Postal Service as a whole may suffer. The lack of a cohesive, functioning system of postal service facilities may cause the entire system to lose its fundamental capacity to serve the public. The long-standing tradition of convenient and local postal facilities may wither and persons will seek other options in greater numbers. It does not appear that the budgetary problems of the Postal Service are materially caused by operating retail facilities. The risks of impairing the network of post offices should be considered in any decision to undertake a systematic closing of those facilities.

The Postal Service is harming one its major assets in planning to close many retail facilities. The calculation of "cost savings" ignores the profits earned by the stations. Patrons go to the facilities because of the friendly and helpful employees who provide assistance in answering questions and

mailing packages. The options to purchase stamps at other locations or through the internet do not substitute for the basic function of the retail facilities, which is to provide hands-on and skilled service. By failing to take credit for its substantial asset of a trained and knowledgeable workforce at post offices, the Postal Service is greatly increasing its budget problems and even its reason to have retail facilities.

The cost savings methodology is further flawed by the Postal Service's apparent failure to calculate or explain one-time costs, such as lease terminations. It seems that the Postal Service is incurring large costs to break leases when it would be financially prudent to let the leases run until the end of the term. The fundamental lack of understanding of financial analysis by the Postal Service is revealed in its decisions to terminate leases in an apparent effort to expedite closings, rather than to improve the budget of the Postal Service.

Another flaw in the cost savings analysis concerns employee compensation. If the postal employees will simply be moved to another facility, there would be no cost savings to the Postal Service in the category of employee compensation. The employee compensation costs would remain, but would be incurred at another facility. Thus, analyzing cost

savings only by facility and not on a regional basis is misleading.

The Postal Service's determination concerning whether other facilities are convenient is based on miles without regard for traffic and method of transportation. If patrons travel by foot or public transportation, then a distance of two miles to the postal facility can present a substantial investment of time. Patrons will seek other options, rather than spending an hour or more to make the trip to the post office. It should be noted that requiring patrons to travel miles further to use a postal facility goes against the present concerns about the environment, fuel economy and livability. Proper urban planning seeks to encourage walking, bicycling and the use of public transportation. The Postal Service is violating important urban planning precepts in forcing patrons to travel by vehicle several miles or more to use a postal facility.

A review of the recent determinations by the Postal Service shows many failings in the process and factual support for decisions to close post offices. At a time when the number of proposed closings and appeals is increasingly dramatically, the determination process and record must be greatly improved. At a minimum, the determination to close must not violate the requirements set out in 39 U.S.C. § 404(d)(5)(A), (B) and (C).

Right to petition for review in the D.C. Circuit Court

There is a right to petition for review of the orders of the Postal Regulatory Commission in the United States Court of Appeals for the District of Columbia Circuit. *See* 39 U.S.C. § 3663, which provides that a person adversely affected by a final order of the Postal Regulatory Commission may petition for review in the United States Court of Appeals for the District of Columbia Circuit.

FACTUAL BACKGROUND

Initial proposal

The request for authorization to investigate a possible change in postal services at the Pimmit Branch was in a letter dated April 9, 2009, from Robert Gingell, Manager, Post Office Operations, to Michael S. Furey, District Manager. *See* Admin. Record, Item No. 1. The letter stated that “A new facility is being proposed for the Main Post Office at Falls Church which will contain Retail and Post Office Box operations. The purpose of this investigation is to determine the feasibility of eliminating the Pimmit Branch and combining its operations with the proposed new retail facility for the main office.”

Two letters were written on April 29, 2009, about the Pimmit Branch

study. The letters stated in part, "This letter is an informational notice of the intent of the United States Postal Service to conduct a study to determine the feasibility of eliminating the Pimmit Branch and consolidating operations with the new retail unit that is going to serve the Falls Church Main Office." Admin. Record, Item No. 2, pp. 1, 2.

A letter dated May 20, 2009, to the Falls Church Postmaster included the following request: "Please provide the names and addresses of businesses, religious institutions, civic organizations and local government offices and schools that are served by the Pimmit Branch." Admin. Record, Item No. 3.

The Community Survey Sheet is dated December 14, 2009. In response to a question about population growth, the response is that "A 1.6% growth rate is projected from the 2008 population to 2010. Data was obtained from the Fairfax County web site." Another question asks "What residential, commercial, or business growth is expected? (Please document your source)" The response to that question is that "The population growth in item 2 is for residential. No commercial or business growth data was available." Admin. Record, Item, No. 4, p. 1.

The Post Office Closing Proposal Fact Sheet is dated November 20,

2009. It states that the reason for the proposal to discontinue is "Part of DAR Justification for Falls Church Main Office project." The annual lease payment is \$78,676 and the lease expires on October 31, 2012. There is no 30-day cancellation clause. Admin. Record, Item No. 8, p. 1.

A Postal Service document dated November 20, 2009, discusses the staffing and physical capacity if the proposal is implemented. The document states that "The Falls Church Main Office Finance Unit will be able to physically absorb the retail work load. This was taken into consideration in the DAR for the New Finance unit at the main office." Admin. Record, Item No. 15, p. 5.

The Proposal to Close the Pimmit Branch states that "The DAR for the Falls Church Finance Unit indicated the Pimmit Branch would be closed." Admin. Record, Item No. 22, p. 6.

The hours at the Pimmit Branch had previously been reduced. That reduction in hours had already caused a hardship to postal customers. One comment stated "Please do not close this branch and please reconsider the Saturday and afternoon closures. Many of those who need the branch the most will not even be aware that it is up for closures because of language barriers and because they are working two or three jobs to make ends meet.

They cannot get to the branch during its current hours and have been significantly impacted by the hours already cut.ö This comment also noted that many users of the Pimmit Hills Branch do not have cars and rely on its close proximity to where they live. Admin. Record, Item No. 12, p. 108. Other comments about the reduction in hours and Saturday closing are at the Admin. Record, Item No. 12, pp. 163, 173, 174, 175. It is not clear if the reduction in hours was part of the plan that included moving retail facilities from 301 W. Broad to 800 W. Broad in downtown Falls Church.

The Falls Church Main Post Office is located at 301 W. Broad Street. The carriers operate from that facility and it previously also was the retail facility. There is a parking lot next to the building with easy access to the lobby and the retail counter. Photos of the Falls Church Main Post Office at 301 W. Broad Street are attached hereto.

Pimmit Hills Community and Tysons Corner

Pimmit Hills is a community located in Fairfax County, Virginia. The community is administered by the Fairfax County government. According to a Washington Post website (attached hereto), Pimmit Hills has a population of 6,114 and a median household income of \$74,520. The average price of homes sold in 2010 was \$505,828.

The Pimmit Branch is located at 7520 Leesburg Pike, Falls Church, Virginia 22043. Even though it has a Falls Church mailing address, the Pimmit Branch is not in the city of Falls Church. The Pimmit Branch is in the Pimmit Hills neighborhood.

The Pimmit Branch is easily accessible from Tysons Corner. *See* attached map from 7520 Leesburg Pike to 8028 Leesburg Pike (address of Tysons Corner Marriott). The Pimmit Branch is slightly more than a mile from Tysons Corner Center, a major shopping center.

The Tysons Corner region is a widely-known major urban area. It has 26.7 million square feet of office space and five Fortune 500 headquarters. There is substantial further development planned with additional Metro stops and rail to Dulles International Airport. It is anticipated that the number of residents will increase fivefold, to 100,000, by 2050. *See* Jonathan O'Connell, *Tysons Corner: The building of an American city*, The Washington Post, September 24, 2011 (attached hereto).

The Fairfax County Comprehensive Plan includes a section on the Tysons Corner Urban Center, amended through 6-22-2010 (excerpts attached hereto). The introduction at p. 1 explains that "Tysons, with its large concentration of office and retail development, is well positioned to take

advantage of the coming of Metrorail's Silver Line.

The plan explains at p. 10 that the transformed Tysons will have eight districts. Further, "boundaries between the districts will be blurred as people move seamlessly from one place to the next. The connectedness and uniqueness of each place will be mutually supportive, creating a 24-hour urban center of great vitality." One of the districts is East Side. According to the plan at p. 12, "the East Side District serves as a transition area between higher intensity TOD (transit-oriented development) Districts and the adjacent Pimmit Hills neighborhood abutting Tysons. Portions of this district will redevelop into urban residential neighborhoods, including limited retail and office uses serving the local residential population and providing Tysons with some live-work opportunities."

The Pimmit Branch is one of three postal facilities located within two miles of Tysons Corner. *See* Post Office locations in the Tysons Corner, VA area (attached hereto). Closing a branch so close to Tysons Corner, which is anticipated to have massive growth, makes no business sense whatever. The Postal Service should be thankful that it has a long-standing facility in such a valuable and sought-after location. The Postal Service's closing analysis resembles urban planning that assumes the major urban area is a town with

one stoplight in rural America.

The Final Determination to close the Pimmit Branch (õFinal Determinationö), Admin. Record, Item No. 25, pp. 4-9, makes no mention of the existence of Tysons Corner and the effect of its development and growth on the Pimmit Branch. The Final Determination clearly fails to give a correct analysis in the Effect on Community category with its complete omission of the Tysons Corner region. As will be discussed below, the arguments and pleadings submitted by the Postal Service consist almost entirely of boilerplate language unsupported by any record material. The failure to explain that Pimmit Hills is located in the Tysons Corner area is one example of the profound lapses in the documents prepared by the Postal Service.

Pimmit Hills is a community and also is part of the Tysons Corner/McLean area. The comments reflect this. One comment said, õThis is my community. In a community a post office is essential.ö The response to that comment is confusing and not helpful. That response was õYou stated it is essential for a community to have a post office. Every community does not have a post office. A communities identity derives from the interested and vitality of its residents.ö Admin. Record, Item No.

12, pp. 115A, 116. Some comments referred to nearby businesses, such as Trader Joe's, and the library. Admin. Record, Item No. 12, p. 126A. Another comment stated, "Pimmit is conveniently located in Tysons Corner. í Please keep our Pimmit Post Office open. We need it in Tysons Corner." Admin. Record, Item No. 12, pp. 128, 128A. One comment said, "I like the Pimmit Branch." Admin. Record, Item 12, p. 144B. Another comment noted, "The branch, whose customers are quite diverse, has a neighborhood feel. In addition, this branch is on the route and close to my office and is convenient to Trader Joe's and Whole Foods (where I prefer to shop for groceries). I would very much regret the closing of this branch. Please do not close it." Admin. Record, Item No. 12, p. 133. A comment noted that there are gas, food, convenience store and other places within walking distance. Admin. Record, Item No. 12, p. 166. Similar comments are at Admin. Record, Item No. 12, p. 177A, 268A, 273A.

The Pimmit community also has businesses and those who work out of their home. Admin. Record, Item No. 12, p. 166. A letter to the Falls Church Postmaster stated that "I work at [redacted] í I would ask that you please re-consider closing this branch as it has been a tremendous resource for all of us at [redacted]. Your employees are outstanding and the services

they provide are great. We would all like to see this location remain open. From all the employees at [redacted]. Admin. Record, Item No. 12, p. 147. Another noted that "I like to use Pimmit before 5 pm. It is convenient to my office." Admin. Record, Item No. 12, p. 190.

Several letters explained how the Pimmit Branch was very convenient for their businesses. Admin. Record, Item No. 12, pp. 248, 251, 256A. In one response about a concern for reprinting business stationery, Robert S. Gingell, Senior Manager, Post Office Operations, stated in a letter dated June 10, 2010, that "If a decision is made to actually close the Pimmit Branch, we will give as much of an advance notice as possible in order to minimize the impact to our customers." Admin. Record, Item No. 12, p. 249. However, the letter dated September 14, 2010, about the closing, Admin. Record, Item No. 27, provided fewer than 60 days notice before the closing date of November 10, 2011.

The Pimmit Branch also serves those who do volunteer work. A comment stated that "I get quick & excellent service at the Pimmit Branch. This branch is very convenient for me to mail flat rate pkgs to military bases around the world as part of my volunteer position with a military-associated group." Admin. Record, Item No. 12, p. 210A.

Relocation of Falls Church Retail Facility

The Falls Church Finance Station is located in a newly-constructed office building (photos attached hereto) at 800 W. Broad Street in the Flower Building. The new building features Vienna school Art Nouveau design and was given the nickname, "The Flower Building," by a Falls Church Councilman. See Nicholas F. Benton, *Art Nouveau Design Puts F.C. on Map*, Falls Church News-Press, December 11, 2008; Nicholas F. Benton, *Secret to His Success: How Bob Young Fills His Retail Spaces*, Falls Church News-Press, August 18, 2010 (attached hereto). The Falls Church Finance Station is the anchor tenant of The Flower Building. See notice about available commercial space in Falls Church (attached hereto). A real estate listing (attached hereto) for office space in the Flower Building has the following description: "Newly built office in a Belgian Art Nouveau influenced 'Green' Building í State of the art amenities; 2 levels of on-site parking ó one under cover; 2 finished high-end lobbies; Restaurant & Post Office in building."

In a news release dated June 8, 2009 (attached hereto), the Postal Service announced that it would be relocating the Falls Church Post Office retail operation and post office box services from 301 W. Broad Street to 800

W. Broad Street. The release stated that the move is necessary to make way for the new Falls Church City Center currently under construction. The new City Center will be built on the city-owned public parking lot currently used by Broad Street Postal Customers. It does not appear that the customers of the Pimmit Branch were given notice and an opportunity to comment on the relocation of the retail operation from 301 W. Broad Street to 800 W. Broad Street.

The Postal Service release stated that the relocation to 800 W. Broad Street was necessary because the Falls Church City Center was under construction. However, the Falls Church City Center project apparently has been abandoned. *See Secret to His Success*, Falls Church News-Press, p. 3.

The relocation was described in an article dated April 30, 2009 (attached hereto), in the Falls Church News-Press. The article stated that "Making way for Falls Church's new City Center project, whenever that may come, most of the functions at Falls Church's historic 301 W. Broad St. post office site will soon be relocated five blocks west to the new Art Nouveau-inspired 'flower' building at 800 West Broad. The \$315-million City Center Project approved by the Falls Church City Council last year, includes the public parking lot component of the current post office, which is

property owned by the City. That property is included in the footprint of the new City Center, requiring the customer service aspects of the post office to relocate. í The old facility will retain carrier delivery operations, holding parcels too large for the new center, as well as mail for customers on vacation. In addition, accountable mail ó insured or registered mail ó will be held at the post office at 301 West Broad. There is no change to the parking lot adjacent to the office. Both centers will maintain the same hours, 9 a.m. ó 5 p.m., Monday ó Friday, and 9 a.m. ó noon on Saturday.ö Dean Edwards, *Falls Church Post Office Prepares Move Up Broad Street*, April 30, 2009.

It should be noted that the article about relocating the retail facilities to 800 W. Broad was published in the same month, April 2009, that the authority to study discontinuance of the Pimmit Branch was approved.

In a news release dated September 2, 2009 (attached hereto), the Postal Service announced that 413 retail stations and branches remained under consideration for possible consolidation. The release described the extremely difficult financial position of the Postal Service and stated that it had removed more than \$6 billion in costs in 2009.

It is useful to understand the lease terms for 800 W. Broad Street, 301 W. Broad Street and 7520 Leesburg Pike [the Pimmit Branch]. The lease at

800 W. Broad Street, Suite 100, Falls Church, 22046, became effective on April 1, 2009. It has an expiration date of March 31, 2024. The lease at 301 W. Broad Street, Falls Church, VA 22046, became effective on March 1, 2003. The expiration date is February 28, 2013. The lease at 7520 Leesburg Pike, Falls Church, VA 22043, became effective on November 1, 2005. The expiration date is October 31, 2012.

The annual rent for 800 W. Broad Street is \$234,000. The annual rent for 301 W. Broad Street is \$322,198.50 (excluding related parking facilities). The annual rent for 7520 Leesburg Pike is \$78,676.32.

The retail facility at 800 W. Broad was opened on June 20, 2009. The post office at 301 W. Broad Street was occupied in March 1955. The Pimmit branch at 7520 Leesburg Pike was occupied in September 1980. *See* Falls Church post office facility lease information (attached hereto), viewed at <http://about.usps.com/who-we-are/foia/leased-facilities/md.csv>.

In the Final Determination concerning the Pimmit Branch, one of the customer concerns was about the parking at the Falls Church post office. The response stated that the planning for the new Falls Church Post Office took into consideration additional parking. í During rush hour, it may be difficult to make left hand turns on to Broad Street. It is recommended to

make right hand turns during the high traffic time period.ö

The plan to close the Pimmit Branch was an integral part of the planning for the relocation of retail services to 800 W. Broad Street. The result of the move to 800 W. Broad Street is that the Postal Service now has lease obligations for two facilities (plus related parking) - 301 W. Broad and 800 W. Broad - when it previously had only the obligation for 301 W. Broad. In other words, the Postal Service incurred a new lease obligation, but did not eliminate the existing lease obligation. The annual lease payments have increased from \$322,198.50 for 301 W. Broad to \$556,198.50 for both facilities.

Moreover, the lease for 800 W. Broad is a long-term lease with an expiration date of March 31, 2024. Incurring such a long-term obligation would seem to violate prudent leasing practices, particularly with the uncertainty in the real estate market. The Postal Service should explain why it entered into such a costly and long-term lease in 2009, when it was facing an extremely difficult financial situation and was forced to cut \$6 billion in costs.

It seems likely that the Pimmit Branch is being closed to make up for the extremely costly lease obligation at 800 W. Broad Street. The Postal

Service should review the operations of the facility at 800 W. Broad Street. If the purpose of closing facilities is to reduce costs and help the dire financial situation of the Postal Service, then closing the facility at 800 W. Broad Street would provide substantial cost savings. The retail service presently at 800 W. Broad Street should be relocated. When the facility at 301 W. Broad is closed in the near future, it will be even more difficult for the carriers to get the mail to 800 W. Broad because of the lack of large truck access.

Another advantage of relocating from 800 W. Broad would be the possibility of having the retail and carrier operations in the same building. There have been communication and other difficulties in making deliveries because the retail and carrier operations are not in the same building, as they were before the relocation of the retail operations to 800 W. Broad Street. The facility at 800 W. Broad is apparently not equipped to receive large mail trucks. The carriers have to drive the mail in smaller trucks from 301 W. Broad to 800 W. Broad. Even though the reason for moving to 800 W. Broad was apparently the construction of the City Center development, that development has not occurred. If the Postal Service needs to close a facility to achieve cost savings, terminating the lease for the suite located at 800 W.

Broad Street would be much more cost-effective than closing the Pimmit branch.

Many comments concerned the distance, traffic and inconvenience in going to 800 W. Broad Street, particularly for those without a car and the elderly. One comment noted the "distance for elderly and bus riders. We have many in this area." Admin. Record, Item No. 12, p. 208. Another comment said, "Elderly buy stamps & no computer no car." Admin. Record, Item No. 12, p. 207. Similar comments are included in the Admin. Record, Item No. 12, pp. 187, 205A

The facility at 800 W. Broad is unpopular with customers. The parking there is very difficult, because it requires turning off W. Broad onto a side street and then going into a parking lot, some of which includes pillars and other obstacles. One comment in the questionnaires states that "Getting in and out of Falls Church Station is hard." Admin. Record, Item No. 12, p. 28A. Another comment said "Longer drive through heavy traffic in a direction I never go." Admin. Record, Item No. 12, p. 67A. A comment stated "This is the closest P.O. for my 82 yr old Mom. Parking @ the new FC PO is too difficult for her." Admin. Record, Item No. 12, p. 196. Another comment explained that "People are upset. Getting into Falls

Church plus getting into that new post office is a nightmare and dangerous. Do not close the Pimmit Branch please!ö Admin. Record, Item No. 12, p. 202A.

A letter dated January 16, 2010, discussed the parking as follows: öPlease do not close the Pimmit Branch in Falls Church, VA. Several of us use it daily and the new facility in Falls Church is not a reasonable, safe or good option. I have heard numerous people complaining about the new facility in Falls Church while at the Pimmit Branch. Merrifield is even worse. Getting in and out of the new Falls Church facility is dangerous. Traffic is terrible all of the time and parking is limited. I doubt more cars and people can squeeze into this facility should the Pimmit Branch be closed.ö Admin. Record, Item No. 12, p. 203. Similar comments are at pp. 251, 262, 264A, 266A.

In a letter dated June 10, 2010, Robert S. Gingell, Senior Manager, Post Office Operations replied to the comment concerning parking that öIn addition, I have requested that the Facility Service Office to review the parking situation and determine if improvements should be made at the Falls Church Main Office.ö Admin. Record, Item No. 12, p. 204. It is not clear if the Facility Service Office reviewed the parking situation and what was the

result of any review.

The pedestrian entrance on W. Broad has steps immediately inside the front door and is difficult to navigate. It is not obvious from the front door where there is pedestrian access without steps. At a minimum, getting to an entrance without steps would require walking around the building. It can be questioned whether this building entrance complies with accessibility requirements, particularly because it is the front entrance to the building. The construction of the building seems to be designed primarily for access by car, rather than by pedestrians.

In addition, petitioner does not know what type of signage and accessibility requirements exist for retail postal facilities. However, many of the postal facilities in northern Virginia look like post offices and have parking near the entrance. The Flower Building is an office building and certainly does not look like a post office. It would be difficult for someone looking for a post office to pick out that building as the place where the post office is located. Further, it is not obvious from the front where the parking lot is located. The Flower Building certainly does not have a design characteristic of a postal facility. It is an office building which has a post office in one of its suites.

Relocation of Falls Church Main Post Office

The Falls Church Main Post Office is still located at 301 W. Broad Street, even though it no longer has a retail facility. However, the operations at 301 W. Broad Street will be moving to a building on Eskridge Road, which is part of the postal facilities at Merrifield, Virginia. *See* map (attached hereto). The Falls Church Postmaster, who is presently at the 301 W. Broad Street location, will move to the building on Eskridge Road

The Postal Service incorrectly described the facility at 301 W. Broad Street as a "carrier annex" serving the Falls Church Finance Unit at 800 W. Broad Street. *See* opposition of Postal Service to petitioner's motion to supplement the record, filed on October 25, 2011, at 3. The facility at 301 W. Broad Street is the Falls Church Main Post Office where the postmaster is located. *See* 39 CFR§ 241.1(a), which provides that "a Post Office may be operated or staffed by a postmaster or by another type of postal employee at the direction of the postmaster, including when the postmaster is not physically present."

Further, the Postal Service stated that plans for the relocation of all or part of the Falls Church Post Office are not mentioned in the Administrative Record that the Postal Service filed on October 12, 2011. *See* opposition of

Postal Service to petitioner's motion to supplement the record, filed on October 25, 2011, at 2. However the Administrative Record discusses plans concerning the Falls Church Post Office in letters dated April 9, 2009, April 29, 2009, and May 15, 2009. Admin. Record, Item Nos. 1, 2. A Memo to the Record, dated December 14, 2009, states that "Customers that receive delivery in ZIP Code 22043 pick up the Articles to Large for their mail boxes and other left notice articles at the Falls Church Main Post Office. They do not pick them up at the Pimmit Branch." Admin. Record, Item No. 5. The Postal Service has not accurately represented the contents of the Administrative Record or the plans concerning the facilities at 301 W. Broad Street, 800 W. Broad Street and the Pimmit Branch.

The Postal Service should not be permitted to characterize the facility at 301 W. Broad Street as a "carrier annex." If that facility is the carrier annex, then what facility does the Postal Service designate as the main post office in Falls Church? Further, by calling the facility at 301 W. Broad Street a carrier annex, the Postal Service ignores the history of that facility and the relocation of the retail operations to 800 W. Broad Street from 301 W. Broad Street.

When the Post Office at 301 W. Broad is closed, there will not be a

main post office located in the city of Falls Church. As a result, the distinction between main post offices compared to stations and branches, which is relied upon so extensively by the Postal Service, will no longer exist. The existence of a main post office, at least in an urban area such as northern Virginia, no longer has validity. The facility which is considered the main post office in Falls Church is located at 301 W. Broad. However, it does not have a retail facility. The operations presently being conducted at that facility will move to Merrifield. There will be no main post office in Falls Church.

As a result of the meaningless distinction between main post offices as compared to stations and branches, the Postal Service should not use procedures that rely on that distinction. The same discontinuance procedures should be used for retail postal facilities, which include post offices in which the Postmaster or person in charge works, stations and branches.

Notice of Closing for Pimmit Branch and Opportunity to Comment

In a letter dated January 7, 2010, Admin. Record, Item 11, p. 1, Robert S. Gingell, Senior Manager, Post Office Operations, Merrifield, VA 22081-9998, wrote to postal customers. He stated that consolidation of the Pimmit

Branch was currently under consideration. The letter asked that the enclosed questionnaire be completed and returned by January 19, 2010. On January 18, 2010, the president of the Pimmit Hills Citizens Association sent an email (attached hereto). The email stated that the letter requesting comments about the Pimmit closure was due January 19 (the next day). The email also stated that the information had just been received that day (January 18).

It appears that a number of people either did not receive the questionnaire or received it at a later date through an email from the neighborhood association. One comment stated "This letter was never received by myself or anyone else with whom I have spoken" until emailed 1/28/10. Admin. Record, Item No. 12, p. 160. The petitioner in this appeal, Elaine Mittleman, sent a reply email dated January 20, 2010 (attached hereto). That email indicated that the surveys had only been sent to those with post office boxes and not to those who use the post office.

In a letter dated January 21, 2010 (attached hereto), Elaine Mittleman wrote to Mr. Gingell, expressing her strong opposition to closing the Pimmit Branch. She noted that it appeared that the surveys were given only to those who have post office boxes at the Pimmit Branch. She stated that was a

completely invalid survey method and that many customers at the Pimmit Branch do not have post office boxes.

The notice that the Pimmit Branch would be closed was in a letter posted at the Pimmit Branch. The letter dated September 14, 2011, Admin. Record, Item No. 27, states that "the Pimmit Branch, located at 7520 Leesburg Pike, Falls Church, VA will discontinue operations effective close of business on November 10, 2011." The letter was signed by George S. Chichester, Senior Manager, Post Office Operations, Merrifield, VA 22081-9998.

Freedom of Information Act Request

After receiving notice of the September 14, 2011, letter announcing the closing of the Pimmit Branch, petitioner submitted two Freedom of Information Act requests, dated September 17, 2011, to the Postal Service. The Postal Service responded by letter dated October 19, 2011 (attached hereto). The letter states that the processing costs for the first request would be approximately, \$21,191.70. The cost for the second request would likely be much more since a broader search would have to be performed. The letter states that "we will require at least 50 percent advance payment with your agreement to pay all costs incurred in processing your request. Please

submit your check or money order in the amount of \$10,595.85 made payable to the U.S. Postal Service.

Petitioner has not submitted a payment to the Postal Service for these Freedom of Information Act requests.

Final Determination

The Final Determination, dated June 20, 2011, states that "Taking all available information into consideration, the Postal Service has determined that the advantages outweigh the disadvantages and this final determination is warranted." Admin. Record, Item No. 25, p. 9.

The Final Determination was signed about one year after the official record had been sent to the District Manager on June 21, 2010. Admin. Record, Item No. 23.

The Post Office Change Announcement Form states that the discontinuance date is November 12, 2011. Admin. Record, Item No. 26. However, the Pimmit Branch was actually closed on November 10, 2011. *See* letter dated September 14, 2011. Admin. Record, Item No. 27. The Pimmit Branch was closed fewer than 60 days from the date of the notice on September 14, 2011.

The Change Announcement Form includes the After Change Post

Office Information. The information indicates that the ZIP Code is 22040. It appears that the ZIP Code, 22040, applies to boxes. The ZIP Code at 800 W. Broad is 22046.

The Change Announcement Form has a check by "Route" for the type of replacement service. It is not clear what this means. The city delivery service was already being provided. The title of the Final Determination is "Final Determination to Close the Pimmit Branch, VA Office and Continue to Provide City Delivery Service." Admin. Record, Item No. 25, p. 4.

The Final Determination explains at page 6 that:

Three Stamps on Consignment locations are located within 1.2 miles of Pimmit. They are Chevy Chase, 7501 Leesburg Pike, Whole Foods Market, 7511 Leesburg Pike and Chevy Chase located at 7040 Haycock Rd, Falls Church, VA.

The reference to "Chevy Chase" presumably is to Chevy Chase Bank. The information about Chevy Chase in the Final Determination is not correct. First, Chevy Chase Bank no longer exists. Capital One acquired Chevy Chase Bank in February 2009. The rebranding took about a year and a half and the Chevy Chase Bank at 7501 Leesburg Pike officially changed its name on September 9, 2010. See Tucker Echols, *Capital One hypes customer service in Chevy Chase rebranding*, Washington Business Journal, September 13, 2010 (attached hereto).

In addition, there is no bank at 7040 Haycock Road. *See* Capital One Bank Branch locations within 1 mile of 22043 zip code (attached hereto). Finally, the Capital One Branch at 7501 Leesburg Pike does not have Stamps on Consignment. Thus, the explanation in the Final Determination about Stamps on Consignment locations contains several significant errors.

In addressing the issue of the information about Stamps on Consignment locations included in page 5 of the Final Determination, the Postal Service apparently did not concern itself with whether the information is correct. The Postal Service stated that the record includes all information that responsible personnel considered, and in this case, postal management evidently did not consider the information that Petitioner seeks to produce now. *See* Answer of Postal Service to petitioner's motion to supplement the record, filed on November 14, 2011, at page 2.

The Postal Service provided an additional explanation in its Response to Order No. 1005, December 2, 2011, at 3-4. The Postal Service explained that Item No. 20, which includes a list of nearby retail facilities and Stamps on Consignment locations, was "accurate at the time it was created." Further, "Item No. 20 was entered into the record on June 21, 2010," but "Since Item No. 20 was created, some of the Stamps on Consignment

locations near the Pimmit Branch have changed.ö

Thus, it appears that the discontinuance process includes no provision or procedure for ensuring that the record included in the Final Determination is correct and accurate. Further, it is unclear what date the information was collected and whether the information in the Final Determination is timely. *See* Docket No. A2010-5, Rentiesville Post Office, Rentiesville, Oklahoma, Order No. 618, Order Remanding Determination, December 21, 2010, at 7 (öSound public policy requires that decisions to close post offices be based on reasonably current data. Accordingly, the Commission remands the matter to the Postal Service for further consideration.ö).

Pimmit Branch Customer Petitions and Letters

There was no community meeting about the closing of the Pimmit Branch. Many interested persons have signed petitions against the closing. Those petitions are attached hereto. There have also been letters submitted to the Postal Regulator Commission. They are in the file for this appeal, even if they do not appear on the docket. Those letters are attached hereto.

ARGUMENT

I. The decision to close the Pimmit Branch was part of the justification for leasing the facility at 800 W. Broad Street.

The discontinuance process for the Pimmit Branch did not substantively evaluate whether the Pimmit Branch should close. The decision to close the Pimmit Branch had already been made. Thus, the process, including the questionnaires and comments, apparently was just a charade. The closing of the Pimmit Branch was part of the justification for leasing the facility at 800 W. Broad Street.

The Post Office Closing Proposal Fact Sheet is dated November 20, 2009. It states that the reason for the proposal to discontinue is "Part of DAR Justification for Falls Church Main Office project." Admin. Record, Item No. 8, p. 1. The Proposal to Close the Pimmit Branch states that "The DAR for the Falls Church Finance Unit indicated the Pimmit Branch would be closed." Admin. Record, Item No. 22, p. 6.

The request for authorization to investigate a possible change in postal services at the Pimmit Branch was in a letter dated April 9, 2009, from Robert Gingell, Manager, Post Office Operations, to Michael S. Furey, District Manager. *See* Admin. Record, Item No. 1. The letter stated that "A

new facility is being proposed for the Main Post Office at Falls Church which will contain Retail and Post Office Box operations. The purpose of this investigation is to determine the feasibility of eliminating the Pimmit Branch and combining its operations with the proposed new retail facility for the main office.ö

The language in the Proposal to Close the Pimmit Branch could not be clearer. öThe DAR for the Falls Church Finance Unit indicated the Pimmit Branch would be closed.ö Admin. Record, Item No. 22, p. 6. The decision to close the Pimmit Branch was part of the DAR justification for the project to move the retail facilities to 800 W. Broad Street. The decision to close the Pimmit Branch had nothing to do with the profits or costs at the Pimmit Branch or the need to serve the postal customers in the Pimmit Hills neighborhood. Apparently, the DAR justification for the very expensive long-term lease at 800 W. Broad Street needed to show that the Pimmit Branch would be closed.

The Final Determination should be remanded for the Postal Service to provide the DAR justification and conduct a proper discontinuance study for the Pimmit Branch. The record in this appeal does not include the DAR justification for the Falls Church Main Office project. In addition, the

record does not explain the cost savings for the DAR or in what manner the closing of the Pimmit Branch is part of the DAR justification. The Final Determination cannot be affirmed with these significant omissions in the record.

II. The Commission should remand the Final Determination for further consideration.

The Postal Service must consider the following factors in making a determination on whether or not to close a post office: the effect on the community, the effect on postal employees, whether a maximum degree of effective and regular postal service will be provided, and the economic savings to the Postal Service. *See* 39 U.S.C. § 404(d)(2)(A).

In light of the inadequate record, statements about the closing being part of the DAR justification for the Falls Church Main Office project, and the failure to address substantive concerns of the Pimmit Hills postal customers, this matter should be remanded. The Final Determination is arbitrary and capricious, without observance of procedure required by law and unsupported by substantial evidence on the record.

A. The Postal Service failed to make adequate findings supported by the record concerning the effect on the community.

The record does not support the findings about the effect on the community of Pimmit Hills in closing the Pimmit Branch. First, it is necessary to understand what is meant by community in the requirement that the Postal Service shall consider “the effect of such closing or consolidation on the community served by such post office.” 39 U.S.C. § 404(d)(2)(A)(i).

In the East Elko case, the Postal Service discussed what constitutes a community. *See* Docket No. A2010-3, East Elko Station, Elko, Nevada, Comments of Postal Service, April 19, 2010, at 12. The Postal Service quoted at length a passage from the Oceana Station appeal and concluded that “(t)his language clarifies that for purposes of section 404(b), the entire city is a single community.” *See* Docket No. A82-10, Oceana Station, Virginia Beach, Virginia 23453, Order No. 436, June 25, 1982, at 7-8.

The responses to the questionnaires provide extensive comments about the effects of closing the Pimmit Branch on the Pimmit Hills neighborhood. The standard, boilerplate responses of the Postal Service to the comments do not address the concerns in a substantive matter. The postal customers of the Pimmit Branch include those who are elderly or do not have cars. They appreciate the easy access and walkability of the Pimmit Hills neighborhood and the Pimmit Branch. The customers who

have used the facility at 800 W. Broad do not like that facility. The traffic and parking are very difficult and several comments indicated that the accessibility and parking seem dangerous.

The Postal Service also ignores significant reasons why people go to the post office. The comments are filled with praise for the employees at the Pimmit Branch, who have provided such valuable and friendly service. Many patrons go to the Pimmit Branch to take advantage of the skill and good cheer of those persons. It is heart-breaking to lose that personal contact that so many customers, including petitioner, have had for years with Janice and Kim, the extremely helpful employees.

Further, the options that the Postal Service recommends, such as ordering by computer, have only limited utility. Many customers are mailing packages and need the assistance of the postal employees. Other customers may not have a computer. Customers probably do not want to risk leaving valuable packages on the front step of their house for the carrier to pick up at an unscheduled and unknown time. Businesses operate on a time schedule and cannot afford the extra time and uncertainty associated with these options.

The comments also noted that customers include a trip to the post

office with other errands, such as going to the nearby grocery or library. These types of multi-purpose trips, particularly if accomplished by walking, are encouraged by modern urban-planning. The need to reduce driving and traffic are extremely important goals in northern Virginia. Yet the Postal Service is ignoring all modern urban planning concepts by forcing customers to make additional trips on crowded streets.

The Community Survey Sheet includes a question about expected residential, commercial or business growth. That question includes the instruction, "Please document your source." The response to that question is "The population growth in item 2 is residential. No commercial or business growth data was available." Administrative Record, Item No. 4, p. 1. The Tysons Corner area is undergoing substantial development and transportation construction. There is considerable information available about the Tysons Corner area, which includes Pimmit Hills. The discontinuance study and associated record provide no substantive information or understanding about the economic situation of Pimmit Hills and the Tysons Corner area.

The lack of a substantive record concerning the community and its expected growth has been discussed by the Commission. In a very recent

order concerning the Innis, Louisiana, Post Office, the Commission found that it “cannot conclude that the Postal Service has given adequate consideration to the closing of the Innis post office on the community.”¹ The survey relied upon by the Postal Service contains only conclusory statements and, contrary to the instructions on the form itself, fails to provide sources of support for those conclusory statements.² See Docket No. A2011-34, Innis, LA Post Office, Innis, Louisiana, Order Remanding Determination, November 16, 2011, at 9.

The Postal Service explained in the Final Determination that “If a decision is made to close the Pimmit Branch, we will have a representative from our Sales Group contact the customer to explore ways to retain their business.” Admin. Record, Item No. 25, p. 8. The record does not indicate whether the Sales Group has contacted customers to explore ways for the Postal Service to retain their business.

The Administrative Record and Final Determination do not provide adequate information about the Pimmit Hills community, including its businesses and projected growth. This failure is similar to the problem with the record in the Innis, Louisiana case. The shortcomings in the Pimmit Branch Final Determination indicate that a remand is necessary.

B. The Postal Service failed to make adequate findings supported by the record concerning effective and regular service.

The Postal Service did not properly address the issues concerning effective and regular service. There are numerous comments about the access and convenience for the elderly, people with mobility problems and people who do not have a car or who do not want to drive in the traffic to 800 W. Broad Street. There are not findings about providing effective and regular service for businesses in the Pimmit Hills area.

One of the listed advantages of the alternative delivery proposal is "Carrier delivery service is beneficial to some senior citizens, the handicapped, and working people since customers will no longer need to travel to the Post Office to pick up their mail." Admin. Record, Item No. 25, p. 7. This purported advantage apparently assumes that carrier delivery service did not already exist. There presumably is no change in the carrier delivery service. The persons who wanted carrier delivery service so they did not need to go to the Post Office to pick up their mail likely already had carrier delivery service. This advantage is not an advantage.

The disadvantages do not include the converse of the so-called

advantage. That disadvantage is that senior citizens, the handicapped and working people who do want to use Post Office Boxes will now have to travel in traffic and find a parking place to pick up their mail.

Another advantage was that "Customers opting for carrier service will have 24-hour access to their mail." This advantage is meaningless. Customers who wanted carrier service presumably already had carrier service. The phrase about "24-hour access" to the mail does not make sense, unless it means that customers can take the mail out of their own mailbox at any time during the 24-hour day.

A further advantage is "Savings for the Postal Service contribute in the long run to stable postage rates and savings for customers." This purported advantage is entirely speculative. Obviously, there is no showing whatever that closing the Pimmit Branch will lead to stable postage rates and savings for customers. This advantage is absurd on its face. However, the converse is a disadvantage. Closing the Pimmit Branch will force customers to incur increased costs in lost time, travel expenses and myriad uncertainties about obtaining mail service.

For example, if a customer places an important package on the front step for pick-up by the carrier, the customer will have to devote energy to

monitoring that package to ensure its safety. Alternatively, the customer will have to be on the watch for when the carrier might arrive. These choices places demands on the time and attention of the customer in ways that a simple trip to the nearby post office do not. The comments make clear that many persons incorporate the trip to the post office as one of their errands and a pleasant break in the day, particularly when accompanied by a stop for a snack or coffee nearby. The patrons also enjoy the opportunity to greet and by assisted by the friendly postal workers.

In the recent *Innis, Louisiana*, appeal, the Commission stated that it “cannot conclude that the Postal Service gave meaningful consideration to the concerns expressed by Petitioner.” The Commission found that the Postal Service had not satisfied the requirement that it consider whether customers will receive adequate and regular service if the *Innis* post office is closed. *See* Docket No. A2011-34, *Innis, LA Post Office, Innis, Louisiana*, Order Remanding Determination, November 16, 2011, at 11.

In this case, the Postal Service has clearly failed to consider the numerous comments from the customers of the Pimmit Branch. The thoughtful concerns of the customers, including the difficulty of traveling to and parking at the 800 W. Broad Street facility, were not substantively

addressed. Further, because the Postal Service had already decided to close the Pimmit Branch as part of the plan to lease the facility at 800 W. Broad Street, the Postal Service apparently had to bolster the merits of the 800 W. Broad Street facility as providing effective and regular service. Moreover, in light of the plan to move the carriers from 301 W. Broad Street to Merrifield, there remain unanswered questions about the type of service provided to Pimmit Hills residents and businesses.

C. The Postal Service failed to make adequate findings supported by the record concerning the economic savings to the Postal Service.

The Postal Service estimated in the Final Determination that the total annual savings is \$117,743. This includes the following cost savings: \$27,231 for employee salaries; \$6,720 for Inter-station Transportation; \$78,676 for rental costs; \$3,184 for utilities, and \$1,932 for maintenance. Admin. Record, Item No. 25, p. 9.

The estimated savings are not supported by the record. It must be emphasized that the Administrative Record is substantially redacted. Petitioner submits that it is likely that the redacted portions include information necessary for this appeal. The Postal Service should be required to provide an unredacted version to the extent that privacy or other specific

concerns are not at issue.

There are substantial doubts about the cost savings estimates, including the estimate for employee salaries. The two employees from the Pimmit Branch have been relocated to other facilities. Thus, there appears to be no cost savings from employee salaries.

The purported savings in annual lease costs are also not supported by the record. The lease expires on October 31, 2012, and there is no 30 day cancellation clause. Admin. Record, Item No. 8, p. 1. Thus, the lease for the Pimmit Branch expires about a year after the Branch was closed on November 10, 2011. If it is assumed that the Postal Service must pay for the lease, utilities and maintenance through October 31, 2012, then there will be a cost of \$83,792.

The Postal Service has not included information about the lease in its estimated cost savings. Further, the Postal Service has not explained why it would close a facility if it still has to pay for another year on the lease.

The cost savings estimate includes \$6,720 for Inter-station Transportation. It is not clear what transportation expense would be saved. It is possible that the Postal Service is assuming that there would not have to be transportation costs for the carriers to travel between 301 W. Broad Street

and the Pimmit Branch. However, the carriers will be relocated to Merrifield, so the costs may increase if the carriers make more trips between Merrifield and 800 W. Broad Street. In any event, this cost savings is not explained. A substantial portion of the Administrative Record is redacted. If this transportation cost savings is explained in the redacted portion of the Administrative Record, then the Postal Service should provide an unredacted version of the pertinent part of the Administrative Record.

The economic savings calculation is incomplete because it omits any discussion of revenue. It must be appreciated that economic savings and cost savings are not the same concepts. The Postal Service has explained that the “discontinuance review process does not measure potential revenue loss associated with a station or branch closure because the Postal Service is unaware of any reliable method for such estimation.” However, the Postal Service acknowledged that there is “the expectation that some revenue would be lost.” *See* Docket No. N2009-1, Station and Branch Optimization and Consolidation Initiative, 2009, Reply Brief of the United States Postal Service, December 16, 2009, at 35.

For example, there would be lost revenue because of Pimmit Branch post office box customers who do not get a box at another postal facility.

There would also be lost revenue for customers who cannot travel to another facility or who choose to use alternative methods, such as FedEx or UPS, which are more convenient. Moreover, some customers may be so frustrated or discouraged by the unfair treatment from the Postal Service in closing the Pimmit Branch that they simply stay away from post offices.

The Pimmit Branch has substantial revenue, particularly in light of its costs. The revenue amounts were \$821,543 in FY 2007, \$844,764 in FY 2008 and \$687,149 in FY 2009. Admin. Record, Item No. 8, p. 1. The hours at the Pimmit Branch had been reduced and the Pimmit Branch was no longer open on Saturday. Thus, the revenue would likely have been higher with the hours it had previously been open. It is not clear when the hours were reduced and whether a study had been conducted to determine that the hours should have been reduced.

If the FY 2009 revenue of \$687,149 is reduced by the annual costs of \$117, 743, the result is \$569,406. If this calculation is an approximate profit calculation, then the Pimmit Branch had a profit of more than \$500,000 in FY 2009. There can be no good business reason to close such a profitable postal facility.

The economic savings calculation should also consider the costs for the facility at 800 W. Broad Street, because closing the Pimmit Branch was part of the justification to move to that facility. The lease at 800 W. Broad Street, Suite 100, Falls Church, 22046, became effective on April 1, 2009. It has an expiration date of March 31, 2024. The annual rent for 800 W. Broad Street is \$234,000. The obligation to the Postal Service for the fifteen-year lease at 800 W. Broad Street appears to be \$3,510,000 [15 x \$234,000].

The actions of the Postal Service in signing an extremely costly fifteen-year lease for a suite in an office building, particularly in light of the Postal Service's dire financial situation, are troubling and inexplicable. The decision to close the Pimmit Branch was part of that expensive venture. The financial burden to the Postal Service from agreeing to that fifteen-year lease obligation should not be exacerbated by the actual closing of the very profitable Pimmit Branch.

As the record presently stands, the Postal Service will incur additional payments for the lease and will suffer a loss in revenue. The cost savings estimates are not supported in the record. If the objective of the Postal Service is to increase revenue to improve its severe financial problems, the closing of the Pimmit Branch directly contradicts that objective.

The failure to explain estimated savings has been noted by the Commission in finding the need for a remand. The Commission explained that the Postal Service should incorporate these factors [additional costs for alternative service] in its evaluation of the potential economic savings resulting from closing the Innis post office when it reconsiders its decision. See Docket No. A2011-34, Innis, LA Post Office, Innis, Louisiana, Order Remanding Determination, November 16, 2011, at 12.

As explained above, the decision to close the Pimmit Branch was likely already made before the discontinuance study was conducted. However, the Postal Service may attempt to support the closing decision retroactively by asserting that there are cost savings. To the extent that the closing of the Pimmit Branch is purported to be based on expected cost savings to the Postal Service, the record clearly does not support those cost savings. In fact, it appears that the closing will actually cause the Postal Service to lose revenue and incur additional costs. The findings about economic savings are arbitrary and not supported by the record.

CONCLUSION

For the foregoing reasons, the determination by the Postal Service to close the Pimmit Branch should be remanded for further consideration.